

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1219**

Carl Green,
Appellant,

vs.

USA Towing & Recovery, et al.,
Respondents.

**Filed May 1, 2023
Affirmed
Slieter, Judge**

St. Louis County District Court
File No. 69DU-CV-21-2257

Carl Green, Duluth, Minnesota (*pro se* appellant)

Scott A. Witty, Hanft Fride, A Professional Association, Duluth, Minnesota (for respondents)

Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant contends that respondent wrongfully towed his vehicle when it was blocking a driveway he shared with his neighbor, and the district court erred by granting respondent summary judgment because his neighbor's shared ownership of the driveway

is a disputed fact. Because there is no factual dispute that appellant's vehicle was blocking the driveway and the driveway is subject to a reciprocal easement, we affirm.

FACTS

In April 2021, Michael McArthur and his fiancé intended to leave their home but were unable because a vehicle which belonged to their neighbor, appellant Carl Green, blocked their shared driveway. McArthur and his fiancé attempted to contact Green to ask that he move the vehicle. When their attempts were unsuccessful, they contacted respondent USA Towing & Recovery.¹ USA Towing removed the vehicle from the driveway and impounded it. The next day, Green demanded that USA Towing release his vehicle from its impound lot but refused to pay the towing fee for his vehicle's release.

Green sued USA Towing, alleging trespass, conversion of chattels, and negligence. USA Towing moved for summary judgment, arguing that it had the legal authority to tow Green's vehicle based on McArthur's request. The district court granted USA Towing summary judgment based on McArthur's easement right to full use of the driveway and the undisputed fact that Green interfered with that right by blocking the driveway. Green appeals.

DECISION

"We review the grant of summary judgment de novo to determine 'whether there are genuine issues of material fact and whether the district court erred in its application of the law.'" *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017)

¹ USA Towing is the trade name of respondent Troy's Towing LLC, and respondent Troy Dewall is one of the owners of USA Towing.

(quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). To avoid summary judgment, the nonmoving party must present sufficient evidence “to permit reasonable persons to draw different conclusions” and create more than “a metaphysical doubt as to the factual issue.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Minnesota Statutes section 168B.035 (2022) outlines situations in which a towing authority may tow a vehicle. A “towing authority” is, as relevant, “a private towing company authorized by a local authority.” Minn. Stat. § 168B.035, subd. 1(1). There is no dispute that USA Towing is a towing authority authorized by the City of Duluth. Section 168B.035 “does not restrict the authority of the owner of private property to authorize under chapter 168B the towing of a motor vehicle unlawfully parked on the private property.” *Id.*, subd. 5. “A vehicle may also be impounded after it has been left unattended” on private single-family residential property as soon as it has been left unattended. Minn. Stat. § 168B.04, subd. 2(b)(2)(i) (2022). The owner of an impounded vehicle has the right to reclaim it “upon payment of all towing and storage charges resulting from taking the vehicle into custody.” Minn. Stat. § 168B.07, subd. 1 (2022).

“Conversion is the wrongful exercise of dominion or control over the property of another.” *Bates v. Armstrong*, 603 N.W.2d 679, 682 (Minn. App. 2000), *rev. denied* (Minn. Mar. 14, 2000). “Although a refusal to deliver property upon demand is evidence of

conversion, proof of conversion must also demonstrate repudiation of ownership rights by the possessor.” *Id.*

Green argues that USA Towing is wrongfully exercising dominion and control over his vehicle because the vehicle was located on his property and, therefore, USA Towing did not have authority to remove and impound it. USA towing submitted to the district court the easement agreement, which created a reciprocal easement “for driveway purposes.” Green argues that the district court should have “allow[ed] discovery to show the easement where [he] parked [his vehicle] is 100% owned by [him] and not 50% as alleged.” We are not persuaded.

“An easement is an interest in land possessed by another which entitles the grantee of the interest to a limited use or enjoyment of that land.” *Scherger v. N. Nat. Gas Co.*, 575 N.W.2d 578, 580 (Minn. 1998); *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 789 (Minn. 1970). An easement privileges its owner “to make particular uses of a servient tenement,” but generally “does not preclude the grantor from using the land in a manner not unreasonably interfering with the special use for which the easement was acquired.” *Minneapolis Athletic Club*, 177 N.W.2d at 789. The extent of an easement “depends entirely upon the construction of the terms of the grant.” *Bergh & Misson Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997) (quotation omitted).

The easement agreement created a reciprocal nine-foot-wide easement straddling the property line “for driveway purposes.” McArthur and his fiancé submitted affidavits stating that Green’s vehicle was parked on the driveway in a way that interfered with their

ability to use the driveway. Green presented photos of a different vehicle parked in a different location and entirely on one side of the easement but does not dispute that his towed vehicle was parked on the easement in a manner which interfered with McArthur's use of the easement.

Therefore, there are no genuine issues of material fact—an easement existed for McArthur's full use of the driveway, Green's vehicle was parked on the driveway subject to the easement, and it interfered with McArthur's use of the driveway. Based on McArthur's request as a private property owner, USA Towing had the legal authority to tow and impound Green's vehicle and require payment of the towing and storage charges before releasing the vehicle. Minn. Stat. §§ 168B.035, subd. 5; .04, subd. 2(b)(2)(i); .07, subd. 1. Thus, USA Towing did not convert Green's vehicle, and the district court properly granted USA Towing summary judgment.²

Affirmed.

² Because we conclude that the district court properly granted summary judgment, we need not address Green's assertions that he should be allowed to amend his complaint and to seek punitive damages.